

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES EARNEST RUMSEY, JR., et al.,

Plaintiffs,

Case No. 1:10-cv-880

v.

HON. JANET T. NEFF

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

ORDER APPROVING REPORT AND RECOMMENDATION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants filed a Motion to Dismiss and for Partial Summary Judgment (Dkt 34). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation on June 20, 2012 (Dkt 37), recommending that this Court grant in part and deny in part Defendants' motion. The Report and Recommendation was duly served on the parties. No objections have been filed. *See* 28 U.S.C. § 636(b)(1). Therefore,

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Dkt 37) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss and for Partial Summary Judgment (Dkt 34) is GRANTED IN PART AND DENIED IN PART for the reasons stated in the Report and Recommendation. Specifically, Plaintiffs' claims against Defendant Michigan Department of Corrections are dismissed. Defendants Berghuis, Aardsma, Smith, Sutherby, Swierenga, Harry, Singleton, and Walker are entitled to Eleventh Amendment immunity as to all

of Plaintiffs' claims asserted against them in their official capacity. Plaintiffs' claims against Defendants Aardsma, Berghuis, Sutherby, and Smith are dismissed. Plaintiffs are prohibited from recovering damages for mental or emotional injuries. Plaintiffs' claims against Defendants D'Epifanio and Wells are dismissed for failure to timely effect service. In addition, Defendants' argument that Plaintiff Davis failed to properly exhaust his claims is denied. Defendants' argument that Plaintiffs' allegations concerning the policy "requiring all religious organizations to have membership of 5 or more in order to be able to gather and/or use prison facilities for worship" is dismissed for failure to state a claim.

Dated: July 17, 2012

/s/Janet T. Neff
JANET T. NEFF
UNITED STATES DISTRICT JUDGE